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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

vs.

JIMMY AND MARIA MARINEZ,
Respondents.

NOTICE OF FILING AND PROOF OF SERVICE

TO: Joseph F. Spaniol, Jr.
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PLEASE TAKE NOTICE that on the 22nd day of June, 1988, there was filed with the Supreme Court of the United States, the Motion of Respondents, Jimmy Marinez and Maria Marinez, to Proceed in Forma Pauperis, Affidavit in Support of Motion and Brief in Opposition to the Granting of the Writ of Certiorari in the above-captioned cause.

Raymond A. Feeley

RAYMOND A. FEELEY, Attorney
for Respondents

NO. 87 6160

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

vs.

JIMMY AND MARIA MARINEZ,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

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REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. The issue presented is premature for decision at this time, since the Illinois Supreme Court is currently considering the same issue.

II. The Knock and Announce Rule has its basis in more than two centuries of common law and the United States Constitution.

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REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE ISSUE PRESENTED IS PREMATURE FOR DECISION AT THIS TIME, SINCE THE ILLINOIS SUPREME COURT IS CURRENTLY CONSIDERING THE SAME ISSUE.

The respondents respectfully request that this Court deny the State's Petition for Writ of Certiorari since, the issue is premature and not ripe for decision at this time.

On October 30, 1987, the Illinois Appellate Court for the Third District, the same Court that decided the case of People v. Marinez, decided the case of People v. Saechao, (3-87-0227, See Appendix). The issue in the Saechao case is exactly the same as the issue raised in the Marinez case. The Court in Saechao relied upon the Marinez opinion in holding that the officers' failure to knock and announce was improper.

The Illinois Supreme Court granted the State's Petition for Leave to Appeal in People v. Saechao while it denied the State's Petition for Leave to Appeal in People v. Marinez. The Saechao case has been fully briefed and was orally argued before the Illinois Supreme Court on June 8, 1988.

Since the issue in Saechao appears to be precisely the same as the issue in Marinez, the case is not ripe for review by the United States Supreme Court since the highest court of the State of Illinois will soon rule upon this issue.

II. THE KNOCK AND ANNOUNCE RULE HAS ITS BASIS IN MORE THAN TWO CENTURIES OF COMMON LAW AND THE UNITED STATES CONSTITUTION.

The Knock and Announce Rule does not present an important constitutional issue for this Court to consider. The rule appears to work, and there are very few appeals, involving this issue.

Many states have statutes requiring such action by the police. There is also a federal statute requiring knocking and announcing.

The absence of a statute, or per se constitutional requirement, does not leave the rule without any basis. The roots of the rule are imbedded in more than two centuries of English and American Common Law. Prior to the Bill of Rights being adopted in this country, both English and American Common Law recognized that an individual's fundamental liberty protects him against unannounced police entries (2W LaFave, Search and Seizure, Sec. 4.8(a), 2d ed. 1987). The basis for the protection was the maxim that "every man's home is his castle". Miller v. United States, 357 U.S. 301, 307 (1958). The vitality of the rule was confirmed in Ker v. California, 374 U.S. 23 (1963). The privacy and sanctity of the home was deemed to be fundamental to the principles of liberty. Any intrusion through an outer door violated these principles.

After the Fourth Amendment became a part of the Constitution, the rule was again emphasized as part of the general common law in this country, subject only to limited exceptions. (LaFave, Sec. 4.8(a), at 271, [citing Bell v. Clapp, 10 Johns. 263, N.Y. Sup. Ct. 1813]). Thus, there is unquestionably a common law basis for the Knock and Announce Rule.

The State also argues that the totality of the facts and circumstances surrounding the entry indicated that the police conduct in Marinez was reasonable. The State argues that the subsequent entry made through the open door using no force whatsoever after they had knocked and announced is not the type of entry which the Courts have condemned as unreasonable. Francis Marinez testified that after the officers entered, they grabbed her very hard by the arm and threw her to the floor. She asked the police if she could use the bathroom because she had a bladder infection and they told her that she had to wait (R. 22). The next morning she noticed that her right arm, where the officer had grabbed her was black and blue. Photographs were admitted into evidence which depicted the black and blue marks on her arm (R. 23-24).

Santiago Marinez testified that the police threw him on the floor and he was handcuffed for approximately one (1) hour. He testified that he had bruises on his stomach as a result of being pushed to the floor (R. 40-41). Photographs were admitted into evidence at the hearing depicting the bruises on the stomach of Mr. Marinez (R. 40).

The conduct of the police toward the parents of Jimmy Marinez, elderly people, indicate that the police did not enter in a reasonable and peaceful manner. This fact was noted by the trial court:

"The officers gave the occupants of this house no opportunity to answer their call. In fact, when the door was opened, if it was inadvertent, giving the police the benefit of the doubt that the blows with this flashlight, sufficient enough to dent in what appears to the Court to be a wooden-frame type door, were inadvertent in attempting to open the door, were only for the purpose of -- while they were announcing their presence, even given the benefit of that, upon the door opening, there was nothing to prevent the police from staying at the threshold upon seeing a middle-aged woman seated, reading at the kitchen table and announcing who they were and why they were there and what their purpose was without bursting by her, and the second and third agent, whatever agent, forcing her down to the floor with such force that she has a bruise on her arm, and basically, terrorizing her..."

CONCLUSION

For the reasons and arguments stated herein, the respondents respectfully request that this Court deny the Writ of Certiorari issued to the Appellate Court of Illinois, 3rd District, to review that Court's decision which affirmed the trial judge's decision to grant defendants' motion to quash search warrant and suppress evidence.

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APPENDIX A

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellant,

v.

MUANG K. SAECHAO,
Defendant-Appellee.

Appellate Court of Illinois
Third District
No. 3-87-0227

STATE OF ILLINOIS

3-87-0227
People v. Saechao

APPELLATE COURT THIRD DISTRICT

OTTAWA

At a term of the Appellate Court, begun and held at Ottawa, on the 1st Day of January in the year of our Lord one thousand nine hundred and eighty-seven, within and for the Third District of Illinois:

Present -

HONORABLE TOBIAS BARRY, Presiding Justice X

HONORABLE ALLAN L. STOUDER, Justice

HONORABLE WILLIAM B. WOMBACHER, Justice

HONORABLE JAMES D. HEIPLE, Justice X

HONORABLE ALBERT SCOTT, Justice X

JOSEPH FENNESSEY, Clerk

BE IT REMEMBERED, that afterwards on October 30, 1987 the Order of the Court was filed in the Clerk's Office of said Court, in the words and figures following viz:

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 3-87-0227

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 1987

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, vs. MUANG K. SAECHAO, Defendant-Appellant.	)	Appeal from the Circuit Court of Bureau County Honorable James J. Wimbiscus, Judge Presiding

"Not To Be Published"

JUSTICE SCOTT delivered the order of the court:

Muang Saechao, the defendant, was charged by information with the unlawful possession of more than 200 grams of opium, a Class I felony. After the denial of a motion to quash arrest and suppress evidence, defendant waived trial by jury and a stipulated bench trial was held on the charge of possession of less than 200 grams of a substance containing opium, a Class IV felony. A judgment of guilty was entered and pursuant to agreement the defendant was placed on probation for a period of one year and fined $3,000.

In this appeal the defendant raises the issues that a search warrant for her home was not executed in a reasonable manner because the police failed to announce their purpose, and failed to give occupants a sufficient amount of time to surrender their privacy voluntarily after their knock and announcement of office.

The sheriff's office in Bureau County received information from the Drug Enforcement Administration in California that a package from Laos addressed to Seng Vang Lee in Wyanet, Illinois, had been intercepted and that it contained opium. The sheriff's department picked up the package in St. Louis and transported it to the Wyanet post office. While in the possession of the sheriff's office the package was searched and it was determined that it contained opium. The sheriff's office adopted a plan of surveillance and on April 25, 1985, the defendant, formerly a native of Laos, called at the post office for the purpose of picking up mail for herself and ten other people who lived in her house. The defendant, finding a note in her post office box and being unable to read, presented it to a postal employee who gave her the package addressed to Seng Vang Lee, whose address was that of the defendant's house. Upon arriving home the defendant opened the package which contained ten sealed cans which purported to be cans of tuna fish.

After the defendant picked up the package an Officer Shafner of the sheriff's office secured a search warrant. Shafner and three other officers approached the front door of defendant's residence while other officers approached a rear door. Shafner testified that he gave three hard knocks on the door while simultaneously identifying himself as being from the sheriff's department. The officer testified that as he knocked the door began to swing open and within seconds he entered the residence. Shafner and the other officers entered the room with drawn weapons. Shafner, armed with a shotgun, ordered the defendant and her grandmother to get down on the floor. The defendant and her grandmother

were taken from the house prior to a search being conducted with the use of police dogs.

The defendant's version of the events differs from the testimony of Officer Shafner in that she stated the door was not ajar but closed when she heard one loud bang or knock and that the door opened immediately thereafter.

We note that the sufficiency of probable cause to obtain the issuance of a search warrant itself was not contested. This appeal centers on the execution of that warrant. The trial judge determined that the facts of this case presented an open door situation and that the officer did make a sufficient announcement. Based upon the testimony of Officer Shafner it is difficult if not impossible to conclude that the door to the defendant's house was open. The officer testified that it was only after three hard knocks that the door began to swing open. We are presented with the question as to whether or not there was compliance with the "knock and announce" rule. The purpose of the rule is to notify the person inside as to the presence of police and of the impending intrusion, so as to give that person time to respond, to avoid violence and to protect privacy as much as possible. People v. Ouellette (1979), 78 Ill. 2d 511, 401 N.E. 2d 507.

This court has recently issued an opinion which is dispositive of the "knock and announce" issue presented in the instant case. See People v. Marinez, No. 3-87-0227, filed September 16, 1987. The case of Marinez is for all practical purposes factually identical with the instant case. In Marinez an in-depth examination of the "knock and announce" rule was made in relationship to what

constitutes exigent circumstances which alleviate the need for the police to knock and announce. It was determined that the mere fact that narcotics, which by their nature are easily destroyed, are the subject of the search does not in and of itself create an exigent circumstance which would justify a failure to knock and announce. Nor does information indicating the presence of weapons alone create exigent circumstances. The holding in the case of Marinez and others cited therein dictate that there were no exigent circumstances present in the instant case which would serve to excuse the law enforcement officers for their failure to knock and announce their presence.

Assuming that an agent did knock and announce his presence and intent, did the simultaneous entry render a reasonable search--made so by a valid search warrant and a knock and announce--unreasonable? On that question this court has stated:

> "As we have stated previously, one of the purposes of the 'knock and announce' rule is to give the defendant time to respond to the presence of the police. If the entry into the dwelling is simultaneous with the knock and announce, that purpose is thwarted. Therefore, if the necessary exigent circumstances are absent and the police knock and announce their presence and intent, they must, in turn, give the occupants of the dwelling time to respond. To hold otherwise would effectively eliminate the need to ever consider the 'knock

and announce' rule." People v. Marinez (No. 3-87-0227, filed September 11, 1987, 3rd App. Dist.), _____Ill. App. 3d _____, _____ N.E. 2d _____.

For the reasons stated the judgment of the circuit court of Bureau County should be reversed. The defendant contends that an outright reversal instead of a remand for new trial would be proper. With this contention we disagree. The judgment of the circuit court of Bureau County is reversed and this case is remanded for a new trial.

Reversed and remanded.

BARRY, PJ;HEIPLE, J., concur.

STATE OF ILLINOIS,
APPELLATE COURT,
THIRD DISTRICT, } ss.

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete copy of the opinion of the said Appellate Court in the above-entitled cause, now of record in this office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this 30th day of October in the year of our Lord one thousand nine hundred and eighty seven.

Clerk of the Appellate Court